

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 1155

Amending Appellate  
Rules 203, 204, 209,  
210, 212, 215, 216,  
217, 218, 219, 502,  
508, 513.5, 604,  
605, and 608 and  
providing for an  
effective date.

IT IS ORDERED:

1. Appellate Rule 203 is amended to provide:

The supervision and control of the proceedings on appeal is in the appellate court from the time the notice of appeal is filed with the clerk of the appellate trial courts, except as otherwise provided in these rules. The appellate court may at any time entertain a motion to dismiss the appeal, or for directions to the trial court, or to modify or vacate any order made by the trial court in relation to the prosecution of the appeal, including any order fixing or denying bail.

2. Appellate Rule 204 is amended to provide:

(a) **When Taken--Appeals and Cross-  
Appeals.**

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(5) *Effect of Taxing of Costs and  
Prejudgment Interest and Awarding of  
Attorney's Fees.*

[a] The running of the time for filing an appeal is not terminated by proceedings related to the taxing of costs pursuant to Civil Rule 79 or while awaiting calculation of prejudgment interest or proceedings related to the award of attorney's fees. However, the statement of points on appeal filed pursuant to Appellate Rule 204(e) ~~210(e)~~ and the designation of transcript record on appeal filed pursuant to Appellate Rule 210(b)(1) ~~210(a)(1)~~ may be amended by motion by an appellant or cross-appellant to include the award or denial of costs and attorney's fees or prejudgment interest and pertinent portions of the electronic record. These subjects will thereafter be considered part of the appeal if covered in the brief of appellant or cross-appellant. If no appeal or cross-appeal is pending, the allowance of costs and attorney's fees or the award of prejudgment interest shall be considered a final judgment subject to separate appeal limited to the subject of costs, attorney's fees or prejudgment interest.

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(b) ~~Notice of Appeal--How Taken~~. A party may appeal from a final order or judgment by filing a notice of appeal with the clerk of the appellate courts ~~court from which the appeal is being taken~~. The notice of appeal must identify ~~specify~~ the partyies taking the appeal and ~~their current addresses~~, designate the final order or judgment or part thereof

appealed from, and name the court to which the appeal is taken. The notice of appeal must shall be accompanied by ~~proof of service on all other parties to the action in the trial court. As provided elsewhere in these rules, at the time it is served and filed the notice of appeal shall be accompanied by a statement of points on appeal (Rule 210 (e)) and designation of record on appeal (Rule 210 (a) (1)) and, if required, by the filing fee (Rule 204 (h)) and a bond for costs on appeal (Rule 204 (e) (1)).~~ If a motion for an extension of time to file the statement of points on appeal or designation of record on appeal has been filed with the appellate court, the appellant shall serve and file with the notice of appeal a written statement to that effect. A motion to waive bond on appeal pursuant to Rule 204 (e), or to appeal at public expense pursuant to Rule 209, may be filed along with the notice of appeal. Otherwise, the clerk of the trial courts shall refuse to accept for filing any notice of appeal not conforming to this paragraph.

[1] a completed docketing statement in the form prescribed by these rules;

[2] a copy of the final order or judgment from which the appeal is taken;

[3] a statement of points on appeal as required by Rule 204(e);

[4] unless the party is represented by court-appointed counsel or the party is the state or an agency thereof,

[a] the filing fee required by Administrative Rule 9(a);

[b] a motion for waiver of filing fee pursuant to Administrative Rule 9(f)(1); or

[c] a motion to appeal at public expense pursuant to Rule 209;

[5] unless the party is represented by court-appointed counsel, the party is the state, municipality, or officer or agency thereof, or the party is an employee appealing denial of compensation by the Alaska Workers' Compensation Board or denial of benefits under AS 23.20 (Employment Security Act),

[a] the cost bond or deposit required by Rule 204(c)(1);

[b] a copy of a superior court order approving the party's supersedeas bond or other security in lieu of bond or a copy of the party's motion to the superior court for approval of a supersedeas bond or other security;

[c] a motion for waiver of cost bond; or

[d] a motion to appeal at public expense pursuant to Rule 209;

[6] a designation of transcript if the party intends to have portions of the electronic record transcribed pursuant to Rule 210(b); and

[7] proof of service of the notice of appeal and all required accompanying documents, except the filing fee, on

[a] the clerk of the trial court which entered the judgment or order being appealed; and

[b] all other parties to the trial court action.

A party may move for an extension of time to file the docketing statement, the statement of points on appeal, and the designation of transcript. The clerk of the appellate courts shall refuse to accept for filing any notice of appeal not conforming to this paragraph and accompanied by the items specified in [1]-[7] or a motion to extend the time for filing item [1], [3], or [6].

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(e) Statement of Points. At the time of filing the notice of appeal, the appellant shall serve and file a concise statement of the points on which appellant intends to rely in the appeal. The appellate court will consider only points included in the statement, and points that the court can

address effectively without reviewing untranscribed portions of the electronic record. On motion in the appellate court, and for cause, the statement of points may be supplemented.

~~(e) Failure to File or Insufficiency of Bond. (Rescinded by Supreme Court Order 576 effective February 1, 1984)~~

(f) **Judgment Against Surety.** By entering into an appeal or supersedeas bond given pursuant to subdivisions (c) and (d) of this rule, the surety submits himself to the jurisdiction of the superior court and irrevocably appoints the clerk of that court as his agent upon whom any papers affecting his liability on the bond may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the superior court prescribed may be served on the clerk of the superior court who shall forthwith mail copies to the surety if his address is known.

(g) **Joint or Consolidated Appeals.** If two or more persons are entitled to appeal from a judgment or order of a court and their interests are such as to make joinder practical, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by

order of the appellate court upon its own motion or upon motion of a party.

~~(h) **Filing Fee.** When a notice of appeal is filed, the appellant shall pay to the clerk of the court from which the appeal is taken a filing fee prescribed in Rule 9, Rules Governing the Administration of All Courts.~~

~~(i) **Notice to Appellate Court.** Immediately upon the filing of the notice of appeal, the Clerk of the trial courts shall send to the clerk of the appellate courts: a copy of the notice of appeal, statement of points on appeal, designation of record on appeal, and proof of service of these documents, indicating the date on which they were filed; evidence that the filing fee has been paid and a bond for costs on appeal posted, if required, or a statement that the appeal is at public expense; a statement identifying all parties to the appeal and the attorneys who represented them in the trial court; and a copy of the judgment being appealed.~~

3. Appellate Rule 209 is amended to provide:

(a) **Civil Matters.**

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(3) If the motion is granted:

[a] The party may proceed without further application to the supreme court;

[b] The superior court shall specify in the order granting the motion which of the following costs or partial costs are to be covered at public expense:

- [1] Filing fees,
- [2] Transcript fees,
- [3] Costs of printing briefs,
- [4] Other costs;

~~[c] The superior court shall indicate in the order granting the motion if the case may be considered on an agreed statement of facts or on a designated abbreviated record, or if a full record is required;~~

[c] ~~[d]~~ Any costs and attorney fees awarded to the appellant or petitioner as a prevailing party in the supreme court shall accrue to the state to reimburse it for costs relating to the appeal or petition for review.

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(b) **Criminal Matters.**

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(6) Counsel appointed to represent a defendant in the trial court pursuant to Criminal Rule 39 shall remain as appointed counsel throughout an appeal at public expense



authorized under this paragraph and shall not be permitted to withdraw except upon the grounds authorized in Administrative Rule 12. ~~In addition,~~ ~~a~~An attorney appointed by the court under Administrative Rule 12(b)(1)(B) will be permitted to withdraw upon a showing that either the public defender agency or the office of public advocacy is able to represent defendant on appeal. If an appeal is to be taken, trial counsel will not be permitted to withdraw until the notice of appeal and the documents required to be filed with the appeal by Rule 204~~(b)~~ have been accepted for filing by the clerk of the appellate ~~trial~~ courts.

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4. Appellate Rule 210 is rescinded and repromulgated as follows:

**Rule 210. Record on Appeal.**

(a) Composition of Record. The record on appeal consists of the entire superior court file, including the original papers and exhibits filed in the superior court, and the electronic record of proceedings before the superior court.

(b) Preparation of Transcript.

(1) Designation of Parts of Record to be Transcribed.

(A) At the time the notice of appeal is filed, the appellant shall file and serve on the other parties to the appeal a designation of the parts of the electronic record which appellant intends to transcribe. The appellant shall designate all parts which are essential to a determination of the issues on appeal. Within 10 days after service of appellant's designation, any other party to the appeal may file and serve a designation of additional parts of the electronic record to be transcribed.

(B) If a party designates an entire trial or hearing, the party's designation shall include only the nature and dates of the proceeding. If a party designates parts of a trial or hearing, the party's designation shall include the nature and dates of the proceeding, the tape and log numbers where these parts appear, and a narrative description of the portions requested. If a party designates a portion of a witness' testimony, it must appear from the party's narrative description that part of the witness' testimony has been omitted.

(2) Preparation at Public Expense. The clerk of the trial courts shall arrange for preparation of the transcript in cases in which the transcript is prepared at public expense. The transcript shall include all parts of the electronic record designated by the parties to the appeal; however, the voir dire examination of jurors and jury instruc-

tions shall not be transcribed unless a party has specifically requested these portions of the trial.

(3) Preparation Not at Public Expense. In cases in which the transcript is not prepared at public expense, the appellant shall contract with an authorized transcriber for preparation of a transcript of all parts of the electronic record designated by the parties to the appeal. Upon request, the clerk of the trial courts shall provide to the transcriber a copy of the designations, a copy of the electronic record or parts thereof, a copy of the log notes and other information necessary for preparation of the transcript.

(4) Time for Completion. Preparation of the transcript shall be completed within 40 days after filing of the notice of appeal. If the transcript is not being prepared at public expense and the transcriber is unable to complete the transcript within this time, the appellant shall move the appellate court for an extension of time. The motion shall comply with Appellate Rule 503, shall also be served on the clerk of the trial courts, and shall be considered a routine motion within the meaning of Rule 503(b).

(5) Filing and Distribution. Upon completion of the transcript, the transcriber shall promptly notify the parties that the transcript has been completed and shall file with the clerk of the trial courts (i) the

original and one copy of the transcript; and (ii) an electronic version of the transcript in the form and format prescribed by administrative bulletin.

(6) Costs. If the transcript is not being prepared at public expense, the cost of preparing the original transcript, the copy filed with the court and the computer diskette shall be paid by the appellant. This cost may be taxed as a cost in the case, but if any party causes parts of the electronic record to be transcribed unnecessarily, the court may impose the cost of transcribing such parts on that party.

(7) Form of Transcript. Transcripts shall be in the form and format prescribed by administrative bulletin.

(8) Statement in Lieu of Transcript. In the event no stenographic report or electronic recording of the evidence or proceedings at a hearing or trial was made, the appellant may prepare a statement of the evidence of proceedings from the best available means, including the appellant's recollection, for use instead of a stenographic or electronically recorded transcript. This statement shall be served on the appellee, who may serve objections or proposed amendments, and shall be submitted to the court from which the appeal is being taken for settlement and approval. As settled and approved, the statement shall be filed with the clerk of

that court and transmitted to the appellate court in lieu of a transcript.

(c) Excerpt of Record.

(1) Duty to Prepare. (A) Each party shall file and serve an excerpt of record with the party's brief, unless the parties have waived the preparation of excerpts pursuant to paragraph (d).

(B) In cases involving multiple appellants or appellees, each side shall prepare a single excerpt of record. In a case involving multiple appellants who are filing separate briefs, the appellant who filed the first notice of appeal shall prepare and file the excerpt for the appellants, unless the appellants otherwise agree. In a case involving multiple appellees who are filing separate briefs, the appellees shall decide among themselves which appellee shall prepare and file the excerpt for the appellees. Ten days prior to the date on which a side's briefs are due, the parties who are not responsible for preparation of the excerpt shall transmit to the responsible party a list of documents to be included in the excerpt. The responsible party shall include in the excerpt all documents which are specified by the other parties, provided such documents are in the record. A party who fails to transmit a list of documents to the responsible party by the 10 day deadline waives the right to designate documents for inclusion in the

excerpt. The responsible party shall mail a copy of the excerpt to each of the other parties on that side six days before the date the briefs are due, or deliver a copy of the excerpt three days before the date the briefs are due, so that the other parties may include the appropriate citations in their briefs. The cost of copying and mailing the excerpt shall be borne equally by all parties on the side.

(C) A cross-appellant or cross-appellee who elects to file a single brief shall file a single excerpt with that brief. A cross-appellant who makes this election shall include in the excerpt those documents that are properly included in an appellee's excerpt under Rule 210(c)(2). A cross-appellant who elects to file separate briefs shall file and serve notice of this election within 10 days after service of the notice of the due date for appellant's brief. If a cross-appellant makes this election, the cross-appellant and the appellant shall be treated as co-appellants filing separate briefs and shall prepare and submit a combined excerpt as required by Rule 210(c)(1)(B). The cross-appellee and the appellee shall be treated as co-appellees filing separate briefs for purposes of that rule.

(2) Contents. The appellant's excerpt of record shall contain a true and correct copy of (i) all charging documents, or the petition or complaint, counterclaim, crossclaim and answer setting out the issues to be tried;

(ii) the judgment or interlocutory order from which the appeal is taken; (iii) other orders or rulings sought to be reviewed; (iv) supporting opinions, findings of fact, conclusions of law or other statements showing the reasoning of the trial court; and (v) specific portions of other documents in the record that are both cited in appellant's brief and essential to the resolution of an issue on appeal. The appellee's excerpt of record shall contain a copy of those parts of the record relied on by appellee which were not included in the appellant's excerpt. Pages of the transcript should not be included in the excerpts and, except where they have independent relevance, memoranda of law in the trial court should not be included in the excerpts. The fact that parts of the record are not included in the excerpts shall not prevent the parties or the appellate court from relying on such parts.

(3) *Supplemental Excerpts.* Appellant may file and serve a supplemental excerpt of record with appellant's reply brief or within the time specified for filing a reply brief. No other supplemental excerpt may be filed except by leave of the appellate court granted on motion, or at the request of the appellate court. A supplemental excerpt may not include parts of the record which appear in another excerpt filed in the appeal.

(4) *Form, Filing and Service.* Each party's excerpt of record shall be bound

separately from the party's brief and shall contain a table of contents at the beginning of the first volume. The excerpt and the table of contents shall be in the form specified in the Clerk's Instructions for Preparation of Excerpts published in these rules. Six copies of the excerpt shall be filed with the brief, and one copy shall be served on counsel for each party separately represented, unless the appellate court directs the filing or service of a lesser number.

(5) Excerpts to be Abbreviated. The parties shall include in the excerpts only those parts of the record which are essential to a determination of the questions presented on appeal. For any infraction of this rule, the appellate court may impose sanctions and withhold or impose costs as the circumstances of the case and discouragement of like conduct in the future may require.

(6) Costs. Subject to subparagraph 210(c)(5), the prevailing party shall be entitled to recover the cost of copying its excerpt of record under Appellate Rule 508(d).

(d) Waiver of Excerpts. The parties may agree to waive the preparation of excerpts of record required under paragraph (c). The agreement must be signed by all parties participating in the appeal and must be filed with the clerk of the appellate courts within 20 days after filing of the notice of appeal.



(e) Preparation of the Trial Court File.

(1) Page Numbering. Upon receiving the notice of appeal, the clerk of the trial courts shall number the pages of the trial court file in a single consecutive sequence throughout all volumes. Page numbering must be completed within 40 days after filing of the notice of appeal.

(2) Confidential Materials. Papers filed under seal in the trial court and exhibits submitted or introduced at closed hearings in the trial court shall be maintained under seal while they constitute part of a record on appeal, and access to them shall be governed by Rule 512.5(c).

(f) Briefing Schedule. Upon filing of the transcript and completion of the page numbering, the clerk of the trial courts shall notify the clerk of the appellate courts that the case is ready for briefing. Upon receiving this notice, the clerk of the appellate courts shall give notice of the due date for the appellant's brief.

(g) Transmission of the Record. (1) Transmission to Appellate Court. Upon notification that briefing is complete, the clerk of the trial courts shall transmit the record, excluding physical exhibits, to the clerk of the appellate courts. Physical exhibits shall be retained by the trial court

unless specifically requested by the appellate court. As used in this paragraph, "physical exhibits" includes exhibits other than documents or photographs, and also includes documents or photographs of unusually large size or unusual bulk or weight.

(2) *Transfer to Other Court Locations.* The clerk of the appellate courts may direct that the record be temporarily transferred to another court location within the state for the accommodation of counsel in the preparation of briefs.

(h) **Several Appeals.** When more than one appeal is taken to the appellate court from the same judgment, there shall be a single record on appeal. In preparing the record, deadlines which run from filing of the notice of appeal shall run from filing of the last notice of appeal.

(i) **Power of Court to Correct, Modify or Supplement.** It is not necessary for the record on appeal to be approved by the trial court or a judge thereof except as provided in subparagraph (b)(8) and in Rule 211, but if any difference arises whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to that court's decision. If anything material to either party is omitted from the record on appeal by error or accident by court personnel, or is misstated therein, the

parties by stipulation, the trial court, or the appellate court, on a proper suggestion or of its own initiative, may direct that the omission or misstatement shall be corrected. All other questions as to the content and form of the record shall be presented to the appellate court. On motion in the appellate court, and for cause, an excerpt of record may be modified or supplemented to correct omissions by counsel.

~~Rule 210. Record on Appeal.~~

~~(a) Designation of Contents of Record on Appeal.~~

~~(1) At the time the notice of appeal is filed, the appellant shall also serve upon the appellee and file with the trial court a designation of the portions of the record, including transcripts, exhibits and any documents from the court file, to be contained in the record on appeal. The designation must describe the materials with reasonable specificity. Within 10 days after the service and filing of such a designation, any other party to the appeal may serve and file a designation of additional portions of the record to be included.~~

~~(2) If the appellant designates nothing other than the material required by subsection (f) (1) of this rule, and the appellee thereafter designates additional material, the parties shall proceed under subsection (b) of~~

~~this rule as if the appellee were the appellant.~~

~~(3) In the absence of an agreement between the parties or an order of the court to the contrary, the appellant shall pay all costs for preparation of the original record and transcript, including the cost of preparation of those portions designated by the appellee. This rule does not govern the payment for copies prepared for the use of the parties or counsel.~~

~~(b) Transcript.~~

~~(1) If there is to be included in the record on appeal any evidence or proceedings that were stenographically reported or electronically recorded, the appellant shall incorporate in his designation a description in the best practical manner of the particular parts of the evidence or proceedings to be included. At the time of filing the request for the preparation of the transcript, the appellant shall state the type of proceedings and the number of days of trial involved.~~

~~(2) The appellant shall ascertain from the clerk of the trial court whether the trial court transcript department has the capability to prepare the transcript in a timely manner. If it does not, the appellant shall contract with an authorized transcribing firm to prepare the transcripts, at a price agreed to between them, within a time which will enable~~

~~the clerk of the trial court to comply with subsection (g) of this rule. The agreement between the appellant and the authorized transcribing firm shall comply with Rule 36 of the Rules Governing the Administration of All Courts. An authorized transcribing firm shall promptly notify the clerk of the trial court when it has been engaged to prepare a transcript for appeal. Promptly upon receipt of such notice, the clerk of the trial courts shall comply with Rule 36 (b) of the Rules Governing the Administration of All Courts. At the time of filing the original of the transcript with the clerk of the trial courts, the authorized transcribing firm shall also submit a statement of the costs of the transcript, identifying the attorney or party who made payment. If additional payment is made at a later time, the transcribing firm shall promptly notify the clerk of the trial courts. The clerk of the trial courts shall transmit this information to the clerk of the appellate courts.~~

~~(3) If the appellant's designation includes only part of the recorded or reported evidence or proceedings, the appellee, in his designation referred to in subdivision (a) of this rule, shall in like manner designate such additional parts thereof as he desires to have added. If it is impractical to describe with precision those portions which the parties desire to have included in the record on appeal, amended or supplemental designations~~

~~maybe filed at the time a transcript has been prepared.~~

~~(4) The request for the preparation of a transcript shall be:~~

~~{a} In writing;~~

~~{b} Served on the other parties to the appeal;~~

~~{c} Accompanied by proof of service; and~~

~~{d} Filed in duplicate with the clerk of the trial courts. The duplicate copy shall be forwarded immediately by the clerk of the trial courts to the clerk of the appellate courts.~~

~~(5) If a copy of the transcript or of the necessary portions thereof is already on file, the appellant shall not be required to file any additional copies.~~

~~(6) Transcripts will be prepared in a form prescribed by the administrative director by administrative bulletin.~~

~~(c) **Stipulation as to Record.** Instead of serving designations as above provided, the parties by written stipulation filed with the clerk of the trial courts may designate the parts of the record, proceedings, and evidence to be included in the record on appeal.~~

~~(d) Record to be Abbreviated.~~ All matters essential to the decision of the questions presented by the appeal must be included in the record on appeal, and all matters not essential to the decision of such questions shall be omitted; and the appellate court will consider nothing but those parts of the record so designated. For any infraction of this rule, the appellate court may withhold or impose costs as the circumstances of the case and discouragement of like conduct in the future may require, and such costs may be imposed upon offending attorneys or parties. In addition, if any material part of the record, proceedings and evidence is not included in the record on appeal, the appeal may be dismissed, or such other order made as the circumstances may appear to the court to require.

~~(e) Statement of Points.~~ At the time of filing his notice of appeal, the appellant shall serve and file with this designation a concise statement of the points on which he intends to rely on the appeal. The appellate court will consider nothing but the points so stated. On motion in the appellate court, and for cause, the statement of points may be supplemented subsequent to the filing of the designation of record.

~~(f) Record to be Prepared by Clerk~~  
**Necessary Parts.**

~~(1) The clerk of the trial courts shall prepare the record on appeal which shall consist of original papers, exhibits and transcript as designated by the parties, and which shall always include, whether or not designated, the following: the material pleadings, without unnecessary duplication; the agency record filed before the superior court in an appeal from an administrative agency; the verdict or the findings of fact and conclusions of law; in an action tried without a jury, the referee's or master's report, if any; the opinion, if any; the judgment or part thereof appealed from; the notice of appeal with date of filing; the designations or stipulations of the parties as to matter to be included in the record; and the statement by the appellant of the points on which he intends to rely.~~

~~(2) In a criminal case, if among the points on appeal is an allegation that the sentence is excessive or too lenient, the record on appeal shall also include, whether or not designated the material required by Rule 215(g)(1).~~

~~(3) If the original of any item to be included in the record on appeal cannot be located or is otherwise unavailable, the clerk may substitute a copy, and shall accompany the record with an affidavit of the clerk or a deputy clerk stating the reasons why the original is not available.~~



~~(4) The record on appeal shall be assembled by the clerk in one or more separate parts or volumes, as the clerk may deem convenient, and with each page numbered at the bottom consecutively, in order that convenient and easy reference, by page and volume numbers, may be had to any particular paper or exhibit in the record. However, if the appeal is taken from the district court, or if the appeal is taken under Rule 216, the pages need not be numbered.~~

~~(5) The clerk shall prepare, sign and attach to the record on appeal a certificate containing the following: a table of contents which shall list each document and exhibit contained in the record on appeal with corresponding volume and page numbers where each such document may be found, and a brief description of each exhibit indicating if the exhibit is a "physical exhibit" which will not be transmitted pursuant to subsection (1) of this rule; the date upon which the preparation of the record was completed; and the dates upon and manner in which notice of such completion of the record was given by the clerk and the names of the parties or their attorneys to whom such notice was given. However, if the appeal is taken from the district court, or if the appeal is taken under Rule 216, the certificate need not include a table of contents.~~

~~(6) Promptly upon the completion of the record on appeal, the clerk shall give notice~~

~~thereof to all parties to the judgment and to the clerk of the appellate courts, by sending them a copy of the certificate referred to in paragraph (5).~~

~~(7) Paragraphs (3), (4), (5), (6), (8) and (9) of this subsection apply to all records on appeal, including supplemental records prepared pursuant to subsection (h) or some other provision of these rules, and including records prepared pursuant to Rule 215 (g), 216 (f), 217 (e), 218 (e) or 219 (d).~~

~~(8) The clerk of the trial courts shall comply with paragraph (6) of this subsection even though, pursuant to paragraph (g) (1), the clerk of the appellate courts may request that a particular record be transmitted to his office immediately upon its completion.~~

~~(9) Papers filed under seal in the trial court, recordings or transcripts of closed hearings held in the trial court, and exhibits submitted or introduced at closed hearings in the trial court, must be included in the record on appeal if designated by a party or required by these rules to be included. Such papers must be maintained under seal while they constitute part of a record on appeal, and access to them shall be governed by Rule 512.5(c).~~

~~(g) Time for Completion of Record.~~

~~(1) The preparation of the record on appeal shall be completed within 40 days from the date of filing the notice of appeal. After completion, the record shall be retained in the clerk's office for a length of time sufficient to permit the preparation of briefs in accordance with Rule 212. The original record, and such copies as may be required, shall be transmitted to the appellate court in a manner and at a time designated by the clerk of that court.~~

~~(2) Should an authorized transcribing firm be unable to complete the transcripts in sufficient time to enable the clerk of the trial courts to comply with this subsection, either the transcribing firm or the appellant shall move the appellate court for an extension of time for completion of the record on appeal. The motion shall comply with Rule 503, shall also be served on the clerk of the trial courts, and shall be considered a routine motion within the meaning of Rule 503 (e).~~

~~(3) Ultimate responsibility for compliance with the time periods of this subsection shall be with the appellant. Sanctions for noncompliance may be imposed as provided in Rule 511.5.~~

~~(h) Power of the Court to Correct, Modify or Supplement Record. It is not necessary for the record on appeal to be approved by the trial court or a judge thereof~~

~~except as provided in subdivision (k) of this rule and in Rule 211, but if any difference arises whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to that court's decision. If anything material to either party is omitted from the record on appeal by error or accident by court personnel, or is misstated therein, the parties by stipulation, or the trial court either before or after the record is transmitted to the appellate court, or the appellate court, on a proper suggestion or of its own initiative, may direct that the omission or misstatement shall be corrected, and if necessary that a supplemental record shall be certified and transmitted by the clerk of the trial courts. All other questions as to the content and form of the record shall be presented to the appellate court. On motion in the appellate court, and for cause, the record may be modified or supplemented to correct omissions by counsel.~~

~~(i) **Record for Preliminary Hearings in the Appellate Court.** (Rescinded by Supreme Court Order 578 effective February 1, 1984)~~

~~(j) **Several Appeals.** When more than one appeal is taken to the appellate court from the same judgment, a single record on appeal shall be prepared containing all the matter designated or agreed upon by the parties, without duplication. The preparation of the~~

~~record shall be completed within 40 days after the filing of the last notice of appeal.~~

~~(k) Appeals When No Stenographic Report or Electronic Recording was Made. In the event no stenographic report or electronic recording of the evidence or proceedings at a hearing or trial was made, the appellant may prepare a statement of the evidence of proceedings from the best available means, including his recollection, for use instead of a stenographic or electronically recorded transcript. This statement shall be served on the appellee, who may serve objections or proposed amendments, and shall be submitted to the court from which the appeal is being taken for settlement and approval. As settled and approved, the statement shall be included by the clerk of that court in the record on appeal.~~

~~(l) Exhibits. If physical exhibits are designated for the record on appeal, the clerk of the trial courts shall list them in the table of contents, together with a brief description of each, but shall not transmit them to the appellate court unless requested to do so by the clerk of the appellate courts. If a party wishes to have particular physical exhibits transmitted, he may file a motion with the appellate court. As used in this subsection, "physical exhibits" includes exhibits other than documents or photographs, and also includes documents or photographs of~~

~~unusually large size or unusual bulk or weight.~~

~~(m) **Transfer of Record on Appeal.** If it is impractical for Alaska counsel for a party to prepare his brief because he resides in a city or town other than the one where the record on appeal is situated, the clerk of the appellate courts may direct the transfer of the record for the accommodation of counsel in the preparation of briefs.~~

5. Appellate Rule 212 is amended to provide:

(a) ~~Serving and Filing~~ **Serving and Filing** ~~and Serving~~ **Briefs.**

(1) *Time for Serving and Filing Briefs.*  
The appellant shall serve and file the appellant's brief within 30 days after service of the notice of the due date for appellant's brief, issued pursuant to Rule 210(f) notice of certification of the record has been served. The appellee shall serve and file the appellee's brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 20 days after service of the brief of the appellee. In cases involving multiple appellants or appellees who are filing separate briefs, including parties who are deemed to be co-parties under Rule 210(c)(1)(C), the time for filing these briefs shall be extended by 10 days if the parties are preparing excerpts of record in order to

allow compliance with Rule 210(c)(1)(B). At the time a brief is filed with the appellate court, it must be accompanied by proof of service on all parties.

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**(c) Substantive Requirements.**

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*(8) References in Briefs to the Record.*

[a] References in Cases in Which Excerpts are Prepared. References in the briefs to parts of the record reproduced in an excerpt shall be to the pages of the excerpt at which those parts appear. The form for references to pages of the excerpt is [Exc. \_\_\_\_]. Briefs may reference parts of the record not reproduced in an excerpt. The form for references to pages of the transcript is [Tr. \_\_\_\_] and to pages of the trial court file is [R. \_\_\_\_].

[b] References in Cases in Which Excerpts are Waived. If the preparation of excerpts has been waived, the briefs shall refer to specific pages of the record transcript or the trial court file. The form for references to pages to the transcript is [Tr. \_\_\_\_] and to pages of the trial court file is [R. \_\_\_\_].

[c] References to be Included. If reference is made to evidence of which the admissibility is in controversy, reference shall be made to the pages of the transcript at which the evidence was identified, offered, and received or rejected. ~~The brief of appellant~~ Appellant's brief shall indicate the pages of the record where each point on appeal was raised in the trial court. If the point on appeal was not raised in the trial court, the brief shall explain why the point is raised ~~so indicate and shall include an explanation of the reasons for raising the point on appeal for the first time on appeal in the appellate court.~~ Failure to comply with the requirements of this paragraph may result in return of the brief as provided in paragraph (11) of this subdivision.

. . .

6. Appellate Rule 215 is amended to provide:

. . .

(b) **Notice of Appeal.** ~~Written~~ A notice of appeal from a sentence ~~by the prosecution, or by a defendant appealing solely on the ground that the sentence is excessive,~~ only shall be filed with the clerk of the appellate courts ~~which imposed the sentence~~ not later than 30 days after the date shown in the clerk's certificate of distribution on the written judgment, except as provided for in ~~by~~ Appellate Rule 204(a)(4). The notice of appeal



need only state that the sentence which is being appealed is too lenient or excessive. ~~Whether or not the defendant is represented by counsel, a notice of appeal filed by a defendant shall state the mailing address of the defendant.~~ When filed, the notice of appeal shall be accompanied by the items specified in Appellate Rule 204(b)[1], [2], [4], and [7] ~~proof of service on opposing counsel, and appellant shall pay to the clerk of the court from which an appeal is taken the filing fee prescribed in Administrative Rule 9.~~

. . .

~~(e) Forwarding Notice of Appeal.~~ Immediately upon filing of a notice of sentence appeal, the clerk shall forward a copy of the notice to the clerk of the appellate court. ~~The copy of the notice sent to the appellate court shall be accompanied by a copy of the judgment as required by Rule 204 (i).~~

~~(f) Sentencing Report. Deleted.~~

~~(g) (e) Record on Appeal.~~

(1) *Preparation and Contents.* Within 15 days after the filing of a notice of sentence appeal, the clerk of the trial court shall prepare sufficient copies of the record on appeal, which shall consist of the following:

[a] all charging documents;

[b] the judgment being appealed;

[c] ~~[a]~~ A a transcript of the entire sentencing proceeding; and

[d] ~~[b]~~ All reports, and documents, motions and memoranda pertaining to sentencing which were available to the sentencing court as an aid in imposing sentence;.

~~[e] Notices of factors in aggravation or mitigation, if any, filed under AS 12.55.155(f).~~

The clerk shall number the pages of the record consecutively ~~in the same manner as required by Rule 210(f)(4).~~ The 15-day period may be extended as provided in Rule 210(g). Appellate Rule 210(c) shall not apply.

. . .

(f) ~~(h)~~ Memoranda on Appeal.

. . .

(g) ~~(i)~~ Disposition of Appeals by Reviewing Court. Sentence appeals will be disposed of by the appellate court on the record. Oral argument, if timely requested no later than ten days after the date on which the appellee's sentence memorandum is due, is limited to fifteen minutes per side, unless

otherwise ordered by the court of appeals. The order of argument is as provided in Rule 213(b). In cases where sentence appeals are consolidated with appeals on the merits, a timely request for argument on the merits in accordance with Rule 213(a) or Rule 217(h) is deemed to include a request for argument on the sentence appeal.

(h) ~~(j)~~ **Bail Pending Appeal.** A sentence appealed on the sole ground that the sentence is excessive does not confer or enlarge the right to bail pending appeal.

(i) ~~(k)~~ **Consolidation of Sentence Appeals with Regular Appeals.** An appeal of a sentence on the ground that the sentence is excessive or too lenient shall be consolidated with an appeal by the same party based upon other grounds. Upon consolidation, the procedure for perfecting an appeal on other grounds shall govern.

7. Appellate Rule 216 is amended to provide:

. . .

(d) **Notice of Appeal.**

(1) A ~~The~~ notice of appeal ~~in an appeal~~ under this rule shall be filed with the clerk of the appellate courts ~~which entered the order or judgment being appealed,~~ within 10 days after the date shown in the clerk's certificate of distribution on the order or

judgment. The notice of appeal shall be accompanied by the items specified in Appellate Rule 204(b)[1]-[4] and [7].

(2) The notice must indicate that the appeal is being filed pursuant to this rule ~~shall identify the appeal as an appeal under this rule,~~ but the court of appeals will apply this rule to cases within its scope whether they are so identified or not.

~~(e) **Forwarding Notice of Appeal.** Immediately upon the filing of a notice of appeal in an appeal under this rule, the clerk of the trial courts shall notify the clerk of the appellate courts in the manner provided in Rule 204 (i).~~

~~(e) (f) **Record on Appeal.** The appellant shall not designate a record on appeal. The entire superior court file shall serve as the record on appeal, together with a cassette tape recording of any hearing held in superior court if deemed necessary by the court of appeals. The papers in the record on appeal need not be numbered at the bottom consecutively, and the trial court clerk's certificate attached to the record need not include a table of contents.~~ Promptly upon the filing of the appellee's memorandum, the clerk of the trial courts shall transmit the original and copies of the record to the clerk of the appellate courts in the same manner as for other appeals. Appellate Rule 210(c) shall not apply.

(f) ~~(g)~~ **Memoranda on Appeal.**

. . .

(g) ~~(h)~~ **Disposition of Appeals.** Appeals under this rule will be disposed of expeditiously by the court of appeals on the record and memoranda. Oral argument, if timely requested no later than ten days after the date on which the appellee's memorandum is due, will be scheduled on an expedited basis. The order and length of oral argument is as provided in Rule 213(b) and Rule 505(e).

8. Appellate Rule 217 is amended to provide:

. . .

(b) ~~The notice of appeal, and the items required by Rules 204 and 210 to be filed therewith,~~ shall be filed with the clerk of the appellate courts from which the appeal is taken, within 15 days after the date shown in the clerk's certificate of distribution on the judgment being appealed. The provisions of Appellate Rule 204(a)(4) shall apply to appeals from the district court. The notice of appeal shall be accompanied by the items specified in Appellate Rule 204(b)[1]-[4], [6], and [7].

(c) Unless otherwise ordered by the court of appeals, the record on appeal shall consist of the entire district court file, together with cassette recordings of those

proceedings designated pursuant to Rule 210(b)(a). Written transcripts may not be prepared except by order of the cCourt of aAppeals. The papers in the record on appeal need not be numbered at the bottom consecutively, ~~and the trial court clerk's certificate attached to the record need not include a table of contents.~~ The clerk of the trial courts shall complete the preparation of the record on appeal within fifteen days from the date of filing the notice of appeal. Appellate Rule 210(c) shall not apply.

. . . .

9. Appellate Rule 218 is amended to provide:

. . . .

**(d) Notice of Appeal and Cross Appeal.**

The notice of appeal in an appeal under this rule shall be filed with the clerk of the appellate courts which entered the order of judgment being appealed, within 15 days after the date shown in the clerk's certificate of distribution on the order or judgment. The notice of appeal shall be accompanied by the items specified in Appellate Rule 204(b)[1]-[7]. The notice must indicate that the appeal is being filed pursuant to this rule ~~and subject to expedited appeal,~~ but the supreme court will apply this rule to cases within its scope whether they are so identified or not. A notice of cross appeal may be filed within 14 days after the notice of appeal is filed.

(e) **Time for Completion of Record.** ~~The record shall be designated and completed as provided in~~ Rule 210 shall apply except that the time for completion of the transcript and page numbering shall be within 30 days after filing of the notice of appeal.

. . .

10. Appellate Rule 219 is amended to provide:

. . .

(c) **Notice of Appeal.** The notice of appeal under this rule shall be filed with the clerk of the appellate courts ~~which entered the order or judgment being appealed~~ within 15 days after the date shown in the clerk's certificate of distribution on the order or judgment. The notice shall identify the appeal as an appeal under this rule, but the court of appeals will apply this rule to cases within its scope whether they are so identified or not. The notice of appeal shall be accompanied by the items specified in Appellate Rule 204(b)[1]-[4], [6], and [7].

(d) **Time for Completion of Record.** ~~The record shall be designated and completed as provided in~~ Rule 210 shall apply except that the time for completion of the transcript, if ordered, and page numbering shall be within 30 days after filing the notice of appeal. The clerk of the trial courts shall take such steps as may be necessary to insure timely

completion of records in cases under this rule, including but not limited to giving the preparation of transcripts in cases under this rule priority over the preparation of transcripts in criminal cases. However, unless otherwise ordered by the Court of Appeals, the record of the trial court proceeding will consist of cassette recordings rather than transcripts. Written transcripts may not be prepared except by order of the Court of Appeals.

. . .

11. Appellate Rule 502(d) is rescinded and repromulgated as follows:

(d) **Mailing of Papers for Filing.** Papers may be filed with either by delivering them to the office of the clerk of the appellate courts in Anchorage, Fairbanks, or Juneau or by mailing them to: Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501 ~~the clerk, but they shall be considered filed on the date they are received by the clerk. They shall be considered timely filed only if they are received by the clerk within the time permitted for their filing.~~ The date of mailing, as shown by the postmark or other proof from the post office, will be deemed to be the date of filing. A postmark date from a privately owned postage meter will not suffice as proof of the date of mailing and papers postmarked in this manner will be deemed filed on the date of receipt by the clerk.



12. Appellate Rule 508(d) is amended to provide:

(d) **Costs to be Awarded.** When costs are awarded in the appellate court, they shall include, unless the court otherwise orders and subject to Rules 210(b)(6) and (c)(6), the filing fee, the costs of preparing the ~~record~~ and transcript, premiums for any bond under Rule 204(c) or 204(d), and the costs of duplicating and mailing briefs and excerpts of record. ~~Costs for duplicating costs~~ briefs will not be awarded in excess of the rate generally charged by printers in the city in which counsel is located.

13. Appellate Rule 513.5(a) is amended to provide:

(a) **Scope.** This rule governs the form of all papers filed in the appellate courts except briefs (which are governed by Rule 212(b)), transcripts (which are governed by Rule 210(b)(~~6~~)), and excerpts of records on appeal ~~(which are governed by Rule 210(c))~~.

14. Appellate Rule 604 is amended to provide:

(a) **Appeals from District Court.**

(1) ~~Preparation of Record~~ on Appeal.

(A) ~~{a}~~ The record on appeal consists of the entire district court file, including the original papers and exhibits filed in the district court, and the record of proceedings before the district court, ~~unless otherwise~~

~~ordered by the court or unless the parties designate an abbreviated record. A party is not required to submit a designation of the record unless the court so requires.~~

(B) {b} The record of proceedings before the district court will include cassette tapes rather than transcripts unless the superior court orders the submission of transcripts. In the absence of an agreement between the parties or an order of the court to the contrary, all reasonable costs incurred in connection with preparing a transcript will be borne by the appellant. Otherwise, the record on appeal must be prepared and certified in conformity with Rule 210. The papers in the record need not be numbered, and the superior court clerk's certificate attached to the record need not include a table of contents.

(C) {e} Within 40 days after filing of the notice of appeal, the clerk of the superior court shall assemble prepare the record on appeal and prepare and distribute notice of the due date for appellant's brief. The papers in the record need not be numbered and a table of contents need not be prepared. In the absence of an agreement between the parties or an order of the court to the contrary, all reasonable costs incurred in connection with preparing the record on appeal or a cross appeal will be borne by the appellant.

~~(2) Time. The record must be prepared and certified within 40 days from the date of filing of the notice of appeal.~~

(2) ~~(3)~~ *Power of Court to Correct or Modify Record of District Court.* If any differences arise as to whether the record on appeal truly discloses what occurred in the district court, the difference must be submitted to and settled by the superior court and the record made to conform to it. If anything material to either party is omitted from the record on appeal by error or accident or is misstated therein, the parties by stipulation, the district court, or the superior court, on motion or of its own initiative, may direct that the omission or misstatement be corrected, ~~and if necessary that a supplemental record be prepared and certified in accordance with this rule.~~

(3) ~~(4)~~ *Return of Record and Appellate File After Final Disposition.* Unless the court otherwise orders, the clerk shall return the record and appellate file after final disposition to the district court as provided by Rule 512(a)(2).

**(b) Appeals from Administrative Agencies.**

(1) ~~Preparation of Record on Appeal.~~

(A) ~~{a}~~ The record on appeal consists of the original papers and exhibits filed with

the administrative agency, and a typed transcript of the record of proceedings before the agency, ~~constitute the record on appeal unless otherwise ordered by the court or unless the parties designate an abbreviated record.~~ In an appeal from the revocation of a driver's license by the Division of Motor Vehicles, the record of proceedings will include cassettes rather than transcripts unless otherwise ordered by the court. ~~A party is not required to submit a designation of the record unless the court so requires.~~

~~(B) [b] The record on appeal must be prepared and certified in conformity with Appellate Rule 210 shall apply except that: 7 except as otherwise provided in this rule.~~

(i) Appellate Rule 210(b)(1) and (2) shall not apply.

(ii) The original transcript shall be filed with the administrative agency. The agency shall forward the transcript to the clerk of the superior court within 40 days after filing of the notice of appeal.

(iii) The administrative agency shall number the pages of the agency file consecutively throughout all volumes. The agency shall forward a copy of the numbered file to the clerk of the superior court with the transcript. Physical exhibits will be retained by the agency unless specifically requested by the court. As used in this rule,

"physical exhibits" includes exhibits other than documents or photographs, and also includes documents or photographs of unusually large size or unusual bulk or weight.

~~(iv) [e] The administrative agency shall prepare the record on appeal. In the absence of an agreement between the parties or an order of the court to the contrary, all reasonable costs incurred in connection with preparing the transcript and the court's copy of the agency file record on appeal shall be borne by the appellant. The preparing agency may require advance payment of the costs as reasonably estimated by the agency.~~

(v) Upon receipt of the transcript and a copy of the agency file, the clerk of the superior court shall prepare and distribute notice of the due date for appellant's brief.

~~(2) Time. The record must be prepared and certified by the agency within 40 days from service of notice by the court that the agency is to prepare the record.~~

~~(3) Notice of Certification of the Record. Immediately upon completion, the agency shall forward the record to the superior court. The court shall notify the parties that the record has been prepared and certified by the agency and is available at the court.~~

(2) ~~(4)~~ *Return of Record and Appellate File After Final Disposition.* If a timely appeal from the superior court decision is filed and unless the court otherwise orders, the clerk shall return all physical exhibits ~~the record~~ after final disposition to the administrative agency as provided by Rule 512(a)(3). If a timely appeal is not filed, the clerk shall return all physical exhibits ~~the record~~ to the agency on the day after the time for filing an appeal expires. The appellate file will be retained by, or returned to, the superior court.

15. Subparagraph (1) of Appellate Rule 605(a) is amended to provide:

(a) **Appeals from Administrative Agencies.** Unless the superior court orders to the contrary:

(1) the time for service and filing briefs is governed by Rule 212(a)(1), ~~except that the time for filing the appellant's brief begins when the superior court clerk notifies the parties of certification of the record pursuant to Rule 604(b)(3);~~

16. Appellate Rule 608 is amended to provide:

A sentence appeal to the superior court is governed by Rule 215. That rule will in case of inconsistency prevail over Part Six of these rules, except that (1) the notice of appeal must be filed in the superior court

~~rather than the district court;~~ and (2) as provided by Rule 604, the record on appeal consists of the entire district court file, including the original papers and exhibits filed in the district court, and the electronic record of proceedings before the district court ~~record and designation of the record is not required.~~ It is only necessary to file with the court the original memorandum on appeal; no additional copies are required.

17. These amendments apply to appeals commenced on or after July 15, 1994. Appellants and cross-appellants in appeals commenced before July 15, 1994 may follow the excerpt of record procedure set out in Appellate Rule 210(c) if

(a) by following that procedure briefing in the appeal will not be delayed;

(b) the trial court appeals clerk has not yet certified the record on appeal; and

(c) the party gives immediate notice to the trial court appeals clerk and the clerk of the appellate courts of the party's intention to follow the excerpt of record procedure.

Supreme Court Order No. 1155  
Effective Date: July 15, 1994  
Page 48

DATED: April 20, 1994

EFFECTIVE DATE: July 15, 1994

/s/  
Chief Justice Moore

/s/  
Justice Rabinowitz

/s/  
Justice Matthews

/s/  
Justice Compton

/s/  
Justice Eastaugh